81-2344

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ALEXANDER L. STEVAS,
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No.....

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1981

A,

Petitioner,

vs.

X, Y, & Z,

Respondents.

On Appeal From
The Supreme Court of Wyoming

PETITION FOR WRIT OF CERTIORARI

DALY, MAYCOCK, ANDERSON & TAYLOR, P.C.

John M. Daly
Counsel for Petitioner
Box 38
Gillette, Wyoming 82716

QUESTIONS PRESENTED

Has the petitioner been denied due process and equal protection under the Fourteenth Amendment by rendition of the final decision in the Wyoming Supreme Court based on the evidence developed under the Wyoming Uniform Parentage Act by the District Court when the natural father has had no opportunity to establish his paternity or fitness for paternity?

Is the natural father entitled to judicial access to initiate a finding of his paternity and his fitness for paternity?

Did the Wyoming Supreme Court violate his rights of equal protection and due process by denying him such access?

PARTIES

A.....The Unwed Father

X.....The Minor Child Having the Same Surname of Y & Z

Y.....The Natural Mother

Z.....The Legal Father

The names of these parties were changed by the order of the District Court.

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DALY, MAYCOCK, ANDERSON & TAYLOR, P.C.

John M. Daly
Counsel for Petitioner
Box 38
Gillette, Wyoming 82716

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF WYOMING

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Petitioner prays that a Writ of Certiorari issue to review the final Order and Judgment of the Supreme Court of the State of Wyoming, entered in this matter on March 8, 1982.

OPINIONS BELOW

The District Court of The Sixth Judicial District, Campbell County, Wyoming filed an opinion on May 22, 1981, dismissing the complaint of the petitioner and is printed in Appendix A hereto, infra, page A-1.

The opinion of the Supreme Court of Wyoming is recorded at 641 P2d 1222 and is printed in Appendix B hereto, infra, page B-1.

Purusant to such decision dated March 8, 1982, a mandate on affirmance was entered in the District Court for Campbell County,

Wyoming on March 25, 1982 and is printed in Appendix C hereto, infra, page C-1.

JURISDICTION

The decision of the Supreme Court of Wyoming, Appendix B, infra, page A-1, was entered on March 8, 1982. The jurisdiction of this court is invoked under 28 USC, §1257 (3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions involved is Section 1 of the Fourteenth Amendment to the Constitution:

> "All persons born or naturalized in the United States and subject to the jurisdicition thereof are citizens of the United States and of the State wherein they reside. No State shall make any law shich shall abridge the privileges orimmunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The provisions of the Wyoming Statutes sought by the petitioner to give him the same

rights as the other litigants to the use of the courts and judicial process are:

> W.S. (Wyoming Statutes Annotated 1977, Republished Edition) 14-2-101.
>
> (a) As used in W.S. 14-2-101 through 14-2-120, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes both the mother and child relationship and the father and child relationship and extends equally to every child and parent regardless of the marital status of the parents.
>
> (b) The parent and child relationship may be established between a child and;
>
> (i) The natural mother by proof of her having given birth to the child or as provided by W.S. 14-2-101 through 14-2-120;
>
> (ii) The natural father as provided by W.S. 14-2-101 through 14-2-120;
>
> (iii) An adoptive parent by proof of adoption.

The Statutes of the State of Wyoming providing to all parents a right to judicial determination of issues of fact, to present defenses and objections, to a trial of issues

and affording an opportunity to be heard are printed and attached hereto as Appendix D.

STATEMENT OF THE CASE

The unwed father, petitioner, A, and Y were married and divorced in a divorce decree dated June 26, 1979. Sometime after the divorce, A and Y co-habited and a child was conceived. Y and Z were then married on February 8, 1980 and a child was born August 3, 1980. The child X was given the same name of Z and Z was listed as the father on the birth certificate. The unwed father, A, then brought an action to establish his paternity and included by amended pleadings, his ex-wife, Y, her husband, Z, and the child, X.

It was stipulated by the parties prior to the hearing of the issue of standing by the court, that blood tests should be taken and the court so permitted said blood tests to be taken. This was done with the belief that the blood tests would indicate that the mother and

the unwed father were not the parents of the child born during the marriage of the mother and the legal father. Blood tests were a 98.82 positive indication that the plaintiff bringing the action was the father. An attorney was then appointed for the minor child.

The hearing was held realative to the issue of standing and the statutory rights of the plaintiff/petitioner to bring the action. Trial briefs were then filed by all attorneys. The plaintiff/petitioner argued he should have standing on due process and equal protection clauses of both the Wyoming and United States Constitution.

The trial court filed a letter of opinion. The court found that the issue of the case was legal issues and the district court stated that the admission was not a legislative oversight but intentional. The trial court found against the petitioner.

The petitioner appealed to the Wyoming Supreme Court. Argument was had and on March 8, 1982, the Wyoming Supreme Court in a 3-1-1 decision, found that the petitioner, unwed father did not have standing to bring an action to establish his parental rights.

REASONS FOR ALLOWANCE OF THE WRIT

When the Wyoming Supreme Court rendered its decision, affirming the judgment of the trial court upon this matter, the Wyoming Court denied to the petitioner-unwed father, the fundamental right of equal protection and the right of due process to be heard.

The Wyoming Court violated the constitutional rights of the unwed father in that in order to enforce the statute against him is to give the mother, the presumptive father and the child, the right of acts against him for proving the parent-child relationships while the statute fails to give him the same right of action. The statutory

mother is permitted to bring suit to establish a parent-child relationship against the biological father and to disrupt the family unit consisting of the mother, the presumed father and the child, in order to declare paternity in another, while the natural father is not permitted in the name of family unity to bring the same action.

The gender base classification substantially affects the interest of the appelant so as to deny him equal protection and due process of law. It impermissibly discriminates natural mothers and those natural fathers who assert their paternity in that the classification was substantially relating to an important governmental interest does not by its own terms achieve the worthwhile protection that it proclaims.

In 1980, Colorado decided the identical

same problem as Wyoming was faced with in R. McG. & C. W. v. J. W. & W. W., 615 P2d 666 (Co. 1980). Wherein the Colorado court found that to deny the father access to establish his paternity and have a fitness hearing of his paternity, of his ability as a father, was to deny him equal protection and due process of law. A decision by the Wyoming Court therefore presents a conflict in two neighboring states under nearly identical uniform parentage acts.

The right to due process of law to present evidence and prove a person is a father, to deny this is unreasonable arbitrary and capricious, a denial of due process. It was decided by the California courts in, In Re, Lisa R., 532 P2d 123 (Ca. 1975), "The right to conceive and raise ones children have been deemed essential;" the basic rights of civil man and the basic rights are far more precious than property right; it is a cardinal with us that the custody and care and the

nurture of a child reside first with the parents whose primary function and freedom includes the preparations, the obligations, the State neither can supply nor hinder.

Stanley v. Illinois, 405 U.S. 645 (1971). The right to associate with ones immediate family is a fundamental liberty protected by both the State and Federal Constitutions, D. S. & R. S. v. The Department of Public Assistance and Social Service, 607 P2d 911 (Wyo. 1980).

The statutory classification of Wyoming does not substantially relate to an important govermental interest and the gender based distinction must serve some important govermental objectives or be substantially related to the achievement of those objectives to make the test of equal protection, R. McG. & C. W. v. J. W. & W. W.

The state has a substantial interest in protecting the rights of parents to their

children, Caban v. Mohammed, 441 U.S. 380 60 Lawyers Edition 2nd 297 (1979).

It is respectfully submitted, therefore, that the natural father has the right to enjoy the benefit of the company of his children along with the natural mother and that to deny him the judicial access to determine who his children might be, by statute, when the natural mother, the presumptive father and the child can all seek action against him, is to deny the natural father equal protection and due process of law.

CONCLUSION

This Petition for Writ of Certiorari should, for the foregoing reasons, be granted.

Respectfully submitted,

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STATE OF WYOMING

SIXTH JUDICIAL DISTRICT

Terrence L. O'Brien, Judge
(307)682-3424

Campbell County
Courthouse
Gillette, Wyo.
82716

May 22, 1981

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Re: Briggs v. Edwards
Civil Action #10789

Gentlemen:

Plaintiff brought this action against Lori and Joseph Edwards and the minor child, Lindsay Edwards, seeking a declaration that he is the father of Lindsay. Pursuant to agreement of plaintiff and Mrs. Edwards, blood tests were conducted by Immunological Associates of Denver, Colorado, and the report from that institution indicates a 98.82%

chance that plaintiff is the biological father.

The issue in this case is legal, rather than scientific. All of the defendants have moved to dismiss the amended complaint because plaintiff lacks standing. The operative facts relating to that issue are not in dispute; Mr. and Mrs. Edwards were married on February 8, 1980, and are still married, and Lindsay was born on August 3, 1980. Mr. Edwards is the presumptive father. W.S.§14-2-102(a)(i).

Superficially, the resolution of this case does not appear difficult. At common law a biological father had no right to bring an action such as this. Blanton v. Warn, 444 P.2d 325 (Wyo. 1968); a putative father has only those rights conferred on him by statute. The Wyoming Legislature enacted its version of the Uniform Parentage Act, W.S.§ § 14-2-101 to 14-2-120 (1977 Repub. Ed.) which establishes a

right of action to determine parentage for certain classes of persons under named circumstances.

If the child had no presumed father, the plaintiff could maintain his action. W.S.§ 14-2-104(c) (1977 Repub. Ed.) He would also have standing if another man was the presumed father under W.S.§ 14-2-102(a)(iv) (1977 Repub. Ed.), because of taking the child into his home and holding it out as his own. W.S.§ 14-2-104(b) (1977 Repub. Ed.). However, when there is a presumed father by reason of marriage or attempted marriage the statute does not afford persons such as the plaintiff a right of action. Plaintiff admits that under the statute he has no standing and further admits that the omission was not legislative oversight, but intentional.

The difficulty in this case arises from plaintiff's position that the statute has to

be construed to afford him standing in situations such as this or it is violative of his equal protection and due process rights. A recent Colorado case has adopted his position. R. McG. v. J.W., 615 P.2d 666 (Colo. 1980). He also cites In re Lisa R., 532 P.2d 123 (Calif. 1975). In R. McG. v. J.W. (a fact situation almost identical to that presented here), the Colorado Supreme Court held that the Colorado (Uniform) Parentage Act which denied a biological father a right of action to establish paternity where there is a presumed father was gender-based discrimination without sufficient state interest and, therefore, unconstitutional. The Court felt that the statutory classification was not substantially related to an important governmental interest, Id. at 670. It applied the rule that genderbased distinctions must serve important governmental

objections and must be substantially related to the achievement of those objectives (the "sharper focus" test). Caban v. Mohammed 441 U.S. 380, 99 S.Ct. 1760, 60 L. Ed.2d 297 (1979); Craig v. Boran, 429 U.S. 190, 97 S.Ct. 451, 50 L. Ed.2d 397 (1976); Reed v. Reed, 404 U.S. 71, 92 S.Ct. 251, 30 L. Ed.2d 225 (1971). The Colorado Court (615 P.2d at 671) was concerned that the standing section was under-inclusive in that it granted standing to the mother, but not a man claiming to be the biological father, to establish the father-child relationship when there was a presumed father. More telling in the Court's view, was the provision in the Colorado statute (parallelled in W.S. § 14-2-104(a)(ii), which gives the child, the natural mother, and the man presumed to be the father, a right to bring an action to rebut the presumption of paternity and declare the

non-existence of a father and child relationship and, in the same action, to join the biological father for the purposes of establishing a father-child relationship.

To the extent that the statute does treat mothers and fathers differently it is a physiological imperative. All of the cases recognize the obvious fact that the mother is more easily identified than the father. "(G)ender based classifications are not invariably invalid. When men and women are not in fact similarly situated in the area covered by the legislation in question, the Equal Protection Clause is not violated." Caban v. Mohammed, supra, 60 L. Ed.2d at 311. In upholding a California Statute which made sexual intercourse with a female under 18 criminal only for the male the United States Supreme Court decided it was not impermissible gender discrimination. Michael M. v. Superior

Court of Sonoma County, ____U.S.____, 49 U.S.L.W. 4373. The Court said (at 4274):

> But because the Equal Protection Clause does not "demand that a statute necessarily apply equally to all persons" or require "things which are different in fact...to be treated in law as though they were the same,"***this court has consistently upheld statutes where the gender classification is not invidious, but rather realistically reflects the fact that the sexes are not similarly situated in certain circumstances.

See also, the dissenting opinions in Caban v. Mohammed, supra, and R. McG. v. J.W., supra. Under that test the statute is not impermissibly gender-based as a matter of law. But, more important, when analyzed it is not gender-based in fact but rests upon the legislative definition of when and to what extent biological paternity overrides other social parameters, eg. family definition and

stability. The Statute gives standing to those within a recognized family unit but not those without.[1/] The "sharper focus" test is not necessary and the inquiry is only whether there appears a rational basis for the classification.

[1/] Wyoming has omitted § 4(a)(5) of the Uniform Act providing a presumption of paternity by filing an acknowledgment. Presumptive fathers are those who are married to or have attempted to marry the mother and the child is born during wedlock or within 300 days afterward. Men who receive children in their home and hold them out as their own are also presumed fathers but any person can bring an action to determine the existence or non-existence of paternity when the child is merely received into the home and held out to be the child of the presumed father. W.S.§

The Courts have recognized the state's interest in the welfare of illegitimate children, Caban v. Mohammed, supra, 60 L. Ed.2d at 306; its interest in promoting the best interests of the child, Quilloin v. Walcott, 434 U.S. 246 98 S.Ct. 549, 54 L. Ed.2d 511, 519 (1978); and its interest in fascilitating adoption, Quillion v. Walcott, 232 SE2d 246 (Ga. 1977). On the other hand the United States Supreme Court has been careful to protect the rights of biological fathers. Caban v. Mohammed, supra, Stanley v.

14-2-104(b). Protection of the rights of common law parents appears to be constitutionally required. Caban v. Mohammed, supra; Levy v. Louisiana, 391 U.S. 68, 88 S.Ct. 1504, 20 L. Ed.2d 436 (1968). The point bears repeating. The statute is designed, not to enlarge the mothers rights at the expense

Illinois, 405 U.S. 645, 92 S.Ct. 1708, 31 L. Ed.2d 551 (1972). Also, it has recognized the constitutional protection afforded parent/child relationships and child rearing responsibilities. Wisconsin v. Yoder, 406 U.S. 205, 231-233, 92 S.Ct. 1526, 32 L. Ed.2d 15 (1972); Cleveland Board of Education v. LaFleur, 414 U.S. 632, 94 S.Ct. 791, 39 L. Ed.2d 52 (1974); Prince v. Massachussetts, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645, (1944).

It is interesting that in those cases where the State's interest was not considered sufficient to overcome a biological father's interest, the integrity of the family unit was not threatened. In Caban v. Mohammed, the biological father sought to block the mother's current spouse from adopting the children born

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of the biological father, but, to protect the family.

during the cohabitation of the biological parents. The biological father was named on the children's birth certificate and he had maintained significant contacts with them over the years. (Under the Wyoming Statute he would have been a presumed father and would have had standing to establish paternity in the statute of limitations W.S.§ 14-2-102(a)(iv) (1977 Repub. Ed.). Stanley v. Illinois, supra, and In re Lisa R., supra, both involved the attempt of biological fathers to assert parental rights after the mother was dead and the custody of the children was with the State.

As previously discussed, the State has an interest in protecting and preserving the integrity of the family unit. See also, Meyer v. Nebraska 262 U.S. 390, 43 S.Ct. 625, 67 L. Ed. 1042, 1045 (1923). It also has an interest in protecting the best interest of

the child. Even in this era of no-fault divorce, frequent premarital sex and cohabitation and new attitudes toward child rearing, a child has a right to legitimacy and that right is one the State is bound to protect during minority. Rule 17(c), W.R.C.P. See also, In the Matter of Parental Rights to Child X, Wyoming Supreme Court, Case No. C-3, October 10, 1980.

The statute is a legimate attempt by the legislature to protect the family unit and the children from external forces. A suit by one outside the marriage, such as in this case, could well destroy a marriage. Plaintiff (and the Colorado Court) is concerned that the mother (actually those within the family unit--the child, the mother, and the presumed father) can bring a parentage action which would have the same deleterous affect on the marriage as would a suit by an outsider. But,

the members of the family, not the outsider, are in the best position to judge whether the marriage can stand the trauma or has already failed. Recognizing the same kind of practical test, the U.S. Supreme Court has held that the spousal testimony privilege may be invoked by the spouse called to testify but not by the spouse against whom the testimony is offered (except for "pillow talk"). Trammel v. United States, ____U.S.____, 100 S. Ct., ____, 63 L. Ed.2d 186 (1980).

It could be argued that under our statute a biological father is prevented from asserting his parental rights even after the mother and the presumed father have divorced and the family unit which the State seeks to protect has dissolved. Such an argument would ignore the State's interest in protecting the child's claim to legitimacy, which survives a divorce. Also, it would extend equal

protection further than the Courts have gone. If the legislative method is rationally related to the State's interest, Courts are not called upon to second guess that method or to strike it down because a better method might be devised. Michael M. v. Superior Court of Sonoma County, supra, 49 U.S.L.W. at 4275.

The equal protection argument is more easily disposed of than the due process problem. See R.McG. v. J.W., supra, 615 P.2d at 674 (Dubofsky concurring opinion). The

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2/ In this case the cart got ahead of the horse. Had the motion to dismiss been presented and decided prior to the blood tests consented to by the plaintiff and the mother much aggravation could have been avoided. In making this observation I intend no criticism

statutory presumption completely forecloses the biological father from asserting his rights regardless of his fitness as a parent. There is no opportunity to minimize error or reduce the possibility of arbitrary action "according to specific factual contests." Harrah v. Larche, 363 U.S. 420, 80 S.Ct. 1502 4 L. Ed.2d 1307, 1321, (1960). Justice Dubofsky would afford a hearing so that the biological father's indication of interest in the child could be considered in relation to the possible harm to the family unit. The

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of counsel. Had the blood test excluded plaintiff as the father the mother could have been resolved with certainty and would have afforded the parties peace of mind they cannot now enjoy. Unfortunately, hindsight provides a better perspective. But, it also emphasizes the value of following the statute and thereby

opportunity for a hearing recognizes that paternity involves more than the mere possession of the necessary physical equipment and would allow the issues to be determined upon the merits of the respective parties' position. The problem is that the hearing process is the very ill the statutory scheme seeks to avoid. Few marriages could withstand the trauma of this kind of litigation. Moreover, the problem is not merely one of weighing the state's interest against the claiming father's. Since a person claiming to be a father would have no right of action at common law a statute permitting such action could be construed as state action disruptive of the family. In Quilloin v. Walcott, supra, 54 L. Ed.2d 511, the Court said (at 520):

> We have little doubt that the

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drawing on the experience of the drafters.

> Due Process Clause would be offended "(i)f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest." Smith v. Organization of Foster Families, 431 U.S. 816, 862-863, 53 L. Ed.2d 14, 97 S.Ct.2094 (1977).

See also D.S. v. Department of Public Assistance and Social Services, 607 P.2d 911, 918 (Wyo. 1980).

I don't believe that a statute which prevents a biological father from bastardizing a child violates due process of law. It appears that the legislature has carefully weighed the various social values and decided that the biological father's rights are subordinate to the collective rights of the child, the mother, the presumed father and the family unit.

The defendants' motions to dismiss the complaint will be granted.

S/Terrence L. O'Brien

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1981

3-8-82

A, Appellant (Plaintiff), v. X, Y, and Z, Appellees (Defendants).	)	No. C-4

Appeal from the District Court of Campbell County, the Honorable Terrence L. O'Brien, Judge.

John M. Daly, of Daly, Maycock, Anderson & Taylor, Gillette, for appellant.

Francis E. Stevens, of Sheehan, Stevens & Sansonetti, Gillette, for appellees.

Dan R. Price, II, of Morgan & Brorby, Gillette, Guardian Ad Litem for appellee, Minor Child X.

Before ROSE, C.J., and RAPER, THOMAS, ROONEY and BROWN, JJ.

THOMAS, J., specially concurred and filed an opinion. ROSE, C.J., dissented and filed an opinion.

ROONEY, Justice.

Appellant-plaintiff (hereinafter referred to as A) brought this action to establish his paternity to appellee-defendant X (hereinafter referred to as child). In early November 1979, A and appellee-defendant Y (hereinafter referred to as mother) engaged in sexual intercourse. On February 8, 1980, mother and appellee-defendant Z (hereinafter referred to as Z) were married. On August 3, 1980, mother gave birth to child. The trial court held that A lacked standing to bring this action. A appeals from the order dismissing his amended complaint with prejudice. A guardian ad litem was appointed for the child.

We affirm.

A alleged in his amended complaint that he is the biological father of child; that Z is the presumptive father of child; that child will have needs; that A has financial means to provide for child's needs; and that he desires to do so. Such allegations are taken to be

true for the purposes of this action. In his prayer, A requests that he be declared the father of child; that child's birth records be changed to strike Z's name therefrom and to reflect A as child's father; and that A be given visitation rights and an obligation to support child.

I

At common law, a biological father could not bring an action for paternity. Blanton v. Warn, Wyo., 444 P.2d 325 (1968). He has only those rights conferred by statute. In recognition of such, A recited that this action was brought pursuant to §§ 14-2-101 through 14-2-120, W.S. 1977. Section 14-2-103, W.S. 1977, designates those entitled to bring a paternity action. It authorizes such action only in three instances:

> "(a) A child, his natural mother or a man presumed to be his father under W.S. 14-2-102 (a) (i), (ii) or (iii) may bring action:
>
> "(i) At any time for

the purpose of declaring the existence of the father and child relationship presumed under W.S. 14-2-102 (a) (i), (ii) or (iii); or

"(ii) For the purpose of declaring the nonexistence of the father and child relationship presumed under W.S. 14-2-102 (a) (i), (ii) or (iii) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than five (5) years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action if he has been made a party.

"(b) Any interested party may bring an action at any time for the purpose of determing the existence of nonexistence of the father and child relationship presumed under W.S. 14-2-102 (a) (iv).

"(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under W.S. 14-2-102 may be brought by the child, the

> department of health and social services, the mother or personal representative of the child, the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or parent of the alleged father if the alleged father has died or is a minor."

A cannot qualify to bring the action under any of the three instances. He is not a presumed father under § 14-2-102(a)(i)(ii) or (iii), W.S. 1977, inasmuch as he was not married to the mother when the child was born; there was no attempted marriage between A and mother before the child's birth which "is or could be declared invalid"; and there was no attempted marriage between A and mother after the child's birth which "is or could be declared invalid." There is not here a presumed relationship under § 14-2-102(a)(iv) inasmuch as such refers to a presumption arising if A receives the minor child into his home and openly holds out the child as his natural child. And, finally, subsection (c),

§ 14-2-104, is inapplicable since there is a presumed father and child relationship under § 14-2-102, between X (sic) and child by virtue of the fact that X (sic) was married to mother at the time of child's birth. Section 14-2-102 provides in pertinent part:

> "(a) A man is presumed to be the natural father of a child if:
>
> > "(i) He and the child's natural mother are or have been married to each other and the child is born during the marriage * * *.
> >
> > * * * * *
>
> "(b) A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. * * *"

It would seem, then, that the issue is settled and that A lacked standing to maintain this action. However, A contends that such construction unconstitutionally deprives him of due process of law and denies to him equal protection of the law 1/ by virtue of an impermissible gender-based classification which results from failure to give the

biological father the same procedure to establish paternity or nonpaternity as is given to the mother.

He does not suggest that such should make the entire enactment (§ 14-2-101, W.S. 1977, et seq.) unconstitutional, and, thus, leave the matter as it would be under common law. Rather, he argues that legislative intent was to enact a constitutional law and that we should give recognition to such intent by construing the act in a manner whereby A would have standing to maintain the action. See Sanches v. Sanches, Wyo., 626 P.2d 61 (1981). 2/

1/ Section 1 of the Fourteenth Amendment of the United States Constitution provides in pertinent part: "* * * nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person * * * the equal protection of the laws." Art. 1, § 2 of the Wyoming

II

A is not denied equal protection of the law. Gender-based classifications are not ipso facto invalid.

> "As is evident from our opinions, the Court has had some difficulty in agreeing upon the proper approach and analysis in cases involving challenges to gender-based classifications. The issues posed by such challenges range from issues of standing, see Orr v. Orr, 440 U.S. 268, 99 S.Ct. 1102, 59 L.Ed.2d 306 (1979), to the appropriate standard of judicial review for the substantive classification. Unlike the California Supreme Court, we have not held that gender-based classifications are 'inherently suspect' and thus we do not apply so-called 'strict scrutiny' to those classifications. See

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Constitution provides: "In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal." Art. 1, § 6 of the Wyoming Consitution provides: "No person shall be deprived of life, liberty or property without due process of law."

> Stanton v. Stanton, 421 U.S. 7, 95 S.Ct. 1373, 43 L.Ed.2d 688 (1975). Our cases have held, however, that the traditional minimum rationality test takes on a somewhat 'sharper focus' when gender-based classifications are challenged. See Craig v. Boren, 429 U.S. 190, 210 n.*, 97 S.Ct. 451, 464, 50 L.Ed.2d 397 (1976) (POWELL, J., concurring). In Reed v. Reed, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 255 (1971), for example, the Court stated that a gender-based classification will be upheld if it bears a 'fair and substantial relationship' to legitimate state ends, while in Craig v. Boren, supra, 429 U.S. at 197, 97 S.Ct. at 457, the Court restated the test to require the classification to bear a 'substantial relationship' to 'important governmental objectives.'

2/ Appellees also refer to legislative intent as a basis for their position. They point to the fact that § 14-2-101, W.S. 1977, et seq., was modeled after the Uniform Parentage Act, but that the following section of the uniform act was omitted from the Wyoming enactment as one of the instances in which a man is

"Underlying these decisions is the principle that a legislature may not 'make overbroad generalizations based on sex which are entirely unrelated to any differences between men and women or which demean the ability or social status of the affected class.' Parham vs. Hughes, 441 U.S. 347, 354, 99 S.Ct. 1742, 60 L.Ed.2d 269 (1979) (STEWART, J., plurality). But because the Equal Protection Clause does not 'demand that a statute necessarily apply equally to all persons' or require 'things which are different in fact . . . to be treated in law as though they were the same,' Rinaldi v. Yeager, 384 U.S. 305, 309, 86 S.Ct. 1497, 1499, 16 L.Ed.2d 577 (1966), quoting Tigner v. Texas, 310 U.S. 141, 147, 60 S.Ct. 879, 882, 84 L.Ed.

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presumed to be the natural father of a child:

"(5) he acknowledges his paternity of the child in a writing filed with the (appropriate court or Vital Statistics Bureau), which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the

1124 (1940), this Court has consistently upheld statutes where the gender classification is not invidious, but rather realistically reflects the fact that the sexes are not similarly situated in certain circumstances. Parham v. Hughes, supra; Califano v. Webster, 430 U.S. 313, 97 S.Ct. 1192, 51 L.Ed.2d 360 (1977); Schlesinger v. Ballard, 419 U.S. 498, 95 S.Ct. 572, 42 L.Ed.2d 610 (1975); Kahn v. Shevin, 416 U.S. 351, 94 S.Ct. 1734, 40 L.Ed.2d 189 (1974). As the Court has stated, a legislature may 'provide for the special problems of women.' Weinberger v. Wiesenfeld, 420 U.S. 636, 653, 95 S.Ct. 1225, 1236, 43 L.Ed.2d 514 (1975)." Michael M. v. Superior Court of Sonoma County, 450 U.S. 464, 101 S.Ct. 1200, 1204, 67 L.Ed.2d

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(appropriate court or Vital Statistics Bureau). If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted." 9A U.L.A. Matrimonial, Family & Health Laws, Parentage

437 (1981).

The classification here made is not "entirely unrelated to any differences between men and women." The differences are the very foundation of the classification. Here, they are obvious. The woman carries the child through pregnancy. When born of her, the fact of motherhood is obvious. Not so the man. The proof of fatherhood, or the proof of the lack thereof, must come from an external source. The entire classification within the act (§ 13-2-101, W.S. 1977, et seq.) is premised on this basic and obvious distinction, it is not invidious, but

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Act, § 4, p. 591 (1979).

Appellees argue that the deliberate omission of such from the Wyoming act evidences an intent to deny such entitlement to a biological father since the language gives such entitlement to him. However the language would not do so in this case. Other states in

"realistically reflects the fact that the sexes are not similarly situated" in the circumstances. Men do not bear children and give birth to them.

Furthermore, to word the enactment without gender classification would result as a purpose for the enactment to be a determination of the existence or nonexistence of a presumed mother in addition to that of a presumed father. Such result would be an absurdity. Nature identifies the mother at the time of birth. There is no need to engage in presumptions.

As reflected in its opinion letter, the

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which the language was not omitted in the adopted legislation interpret the language to afford such entitlement only after the presumption of paternity in another has been rebutted. See, e.g., R. McG. v. J.W., Colo., 615 P.2d 666 at 669 (1980.

trial court properly found that:

> "* * * the State has an interest in protecting and preserving the integrity of the family unit. See also, Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, 1045 (1923). It also has an interest in protecting the best interests of the child. Even in this era of no-fault divorce, frequent premarital sex and cohabitation and new attitudes toward child rearing, a child has a right to legitimacy and that right is one the State is bound to protect during minority. Rule 17(c), W.R.C.P. See also, In the Matter of Parental Rights to Child X, * * * (Wyo., 617 P.2d 1078 (1980)."

And see DS v. Department of Public Assistance and Social Services, Wyo., 607 P.2d 911 (1980).

The trial court continued its proper analysis as follows:

> "The statute is alegimate (sic) attempt by the legislature to protect the family unit and the children from external forces. A suit by one outside the marriage, such as in this case, could well destroy a

marriage. * * * (Appellant) is concerned that the mother (actually those within the family unit--the child, the mother, and the presumed father) can bring a parentage action which would have the same deleterous (sic) affect on the marriage as would a suit by an outsider. But, the members of the family, not the outsider, are in the best position to judge whether the marriage can stand the trauma or has already failed. Recognizing the same kind of practical test, the U.S. Supreme Court has held that the spousal testimony privilege may be invoked by the spouse called to testify but not by the spouse against whom the testimony is offered (except for 'pillow talk'). Trammel v. United States, 445 U.S. 40, 100 S.Ct. 906, 63 L.Ed.2d 186 (1980).

"It could be argued that under our statute a biological father is prevented from asserting his parental rights even after the mother and the presumed father have divorced and the family unit which the State seeks to protect has dissolved. Such an argument would ignore the State's interest in protecting the child's claim to legitimacy, which survives a divorce. Also, it would extend equal protection further than the Courts have gone. If the

> legislative method is rationally related to the State's interest Courts are not called upon to second guess that method or to strike it down because a better method might be devised. Michael M. v. Superior Court of Sonoma County, supra, (450 S.Ct. 464) * * *."

To recognize A's standing to bring this action would be to invite similar actions by those whose only purpose is to break up a family unit to satisfy a jealous or revengeful feeling.

Certainly, if A has an interest which is constitutionally recognizable, it does not rise to the level of a fundamental right requiring that the legislative classification preventing nonfamily persons from attacking the presumption that X (sic) is the natural father be tested by the standard of strict scrutiny. But this classification will withstand even the strict scrutiny test. Such scrutiny discloses a very young child born to mother when she was married to Z (sic). A family unit was thus established. The child

is legitimatized. The statute does not give authority to a stranger to contest the situation without more. For the same reasons, the classification will certainly stand up under the other standards for determining the propriety of a classification. See Skinner v. State of Oklahoma, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942); DS v. Department of Public Assistance and Social Services, supra. The legislative classification is reasonable and bears a fair and substantial relationship to important governmental objectives. It passes a constitutional challenge regardless of the standard by which measured.

It is to be noted that a biological father may assert his interest pursuant to the act (§ 14-2-120) under proper circumstances such as those in which the child has no presumed father, or in which the presumption of paternity results from a man taking the child into his home and holding it out as his

own. In Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972), and in In Re Lisa R., 13 Cal.3d 636, 119 Cal.Rptr. 475, 532 P.2d 123, 90 A.L.R.3d 1017 (1975), the biological father had standing to maintain an action to assert parental rights after the mother was dead and the custody of the child was in the state. The family-unit interest was not threatened. In Caban v. Mohammed, 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979), a statutory provision allowing unwed mothers, but not unwed fathers, the right to object to adoption of the children was held unconstituional with the state intere being to promote legitimatization of children. A former husband and biological father had sought to prevent the mother's current husband from adopting the children born during the cohabitation of the biological parents. The biological father was so named on the birth certificates and had maintained contacts with the children over the years. Under the

Wyoming statute (§ 14-2-102(a)(iv), he would have had standing as a presumed father to bring a timely paternity action. In the action here before the court, the same interest (to promote legitimacy of children) mitigates to declare the parentage enactment to be constitutional.

Not only may the biological father assert his interest under the act (§ 14-2-120) in designated circumstances, thus negating the assertion that the act is gender based, but authorization is there given to the child (approximately 50 percent of the children would be male) and to the presumed father (100 percent of the fathers would be male) to assert their interests. It is difficult to conclude that the classification is based on gender. The classification is based on a distinction between those within the family unit and those without regardless of gender. It recognizes a difference between instances in which legitimacy and the interests of the

child can be protected and those instances where such has already been violated. The nongender-based classification furthers important governmental objectives and has a substantial relationship thereto. If the classification can be said to be gender based, it is not invidious but only realistically reflects the fact that sexes are not similarly situated in these circumstances. And, it is proper under any of the standards applied to it.

III

Nor is A denied due process of the law. Since A had no right to maintain an action for paternity at common law, the enactment (§ 14-2-101, W.S. 1977, et seq.) did not deprive him of any procedural remedy. The plain fact is that the legislature did not establish a private interest in A which would be entitled to protection by legal process. In fact, had such interest and process been provided by the legislature, it could be construed as state

action disruptive of the family. To provide A with a hearing would create the ill which the statutory scheme seeks to avoid. The bringing of such action and the resulting hearing would attack the family unit and the child's legitimacy and well being, and it would cause the harm sought to be avoided, regardless of the outcome of the hearing. Any stranger desiring to injure the mother, the child, or the presumed father, for whatever reason, could inject disruptive elements into the family unit by instituting such action.

> "One of the liberties protected by the Due Process Clause, the Court has held, is the freedom to 'establish a home and bring up children.' (Citation.) If a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest, I should have little doubt that the State would have intruded impermissibly on 'the private realm of family life which the state cannot enter.' * * *" Smith v.

Organization of Foster Families for Equality and Reform, 431 U.S. 816, 97 S.Ct. 2094, 2119, 53 L.Ed.2d 14 (1977).

But, assuming arguendo that X had a constitutionally cognizable interest, competing private and state interests would have to be weighed to determine whether a hearing were necessary to afford due process of the law.

> "In considering this procedure under the Due Process Clause, we recognize, as we have in other cases, that due process of law does not require a hearing 'in every conceivable case of government impairment of private interest.' (Citation.) That case explained that '(t)he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation' and firmly established that 'what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.' (Citations.)" Stanley v. Illinois, supra,

92 S.Ct. at 1212.

The government function in this case (a determination that there is no right of action in A so that he could not attack the family unit and the legitimacy and well being of the child) far outweighs the private interest of A. As stated in the trial court's opinion letter:

> "I don't believe that a statute which prevents a biological father from bastardizing a child violates due process of law. It appears that the legislature has carefully weighed the various social values and decided that the biological father's rights are subordinate to the collective rights of the child, the mother, the presumed father and the family unit."

Affirmed.

THOMAS, Justice, specially concurring.

I agree with the result of affirmance reached by the majority of the court in this case. I am satisfied, however, that the appellant has no standing to attack the constitutionality of §§ 14-2-101 through 14-2-120, W.S. 1977, and the concept of judicial restraint then demands that neither this court nor the trial court should consider the constitutionality of the statutes.

Appellant concedes, and correctly so, that under common-law principles he had no affirmative right to establish his paternity. Blanton v. Warn, Wyo., 444 P.2d 325 (1968). He brought his action asserting a right to proceed under §§ 14-2-101 through 14-2-120, W.S. 1977. These statutes do not afford appellant any affirmative right to establish his paternity.

The appellant's imaginative argument presents an effort to create a right that does not exist by statute or common law. He argues

that since the statutes afford him no right to proceed, the statutes may be subject to constitutional challenge insofar as they affect his rights. Therefore, appellant contends, the statutes must be construed to afford him the affirmative right to proceed with the result being that statutes which do not afford him a right turn into statutes which do. It is my view that this argument, imaginative as it is, does not afford standing to the appellant.

We have held that a party does not have standing to challenge the constitutionality of a statute unless we can identify the fact and nature of any injury to the party's rights which resulted from the enactment of the statute. Budd v. Bishop, Wyo., 543 P.2d 368 (1975). These statutes had no impact upon any right of the appellant. He therefore cannot challenge in this context the constitutionality of the statutes because he

has no standing. In Budd v. Bishop, supra, at 372, we said:

> " * * * (W)e note that the judgment and conclusions of law of the district court affirmatively uphold the constitutionality of the Wyoming Surplus Water Law. Because in our view the constitutionality of the statute could not be reached, we believe it is necessary, in order to honor the concept of judicial restraint as to constitutional issues, that this case be remanded for the purpose of deleting the conclusions of law from the judgment, and entering new conclusions of law to the effect that the action is dismissed because Budd does not have standing to raise the constitutional question."

For these reasons I would hold that the trial court correctly dismissed the appellant's action for lack of standing on his part to attack the constitutionality of the statutes, and for that reason this court should refrain from discussing the constitutionality of the statutes.

ROSE, Chief Justice, dissenting.

The plaintiff-appellant putative father seeks to establish a parent-child relationship with a child who was born to the mother while she was married to another man. That the child was conceived through the union of the appellant and the mother before her marriage is not in dispute. It is also undisputed that the biological mother and father were not married when the child was conceived.

A presumption of natural parenthood attaches to the man to whom the mother was married when the child was born. § 14-2-102, W.S. 1977. The putative father seeks to attack and overcome the presumption with proof that he is the natural father--which, it is agreed, he is. in fact. The putative father's appeal is spearheaded with the concept that his constitutional rights have been violated in that to enforce the statute against him is to give the mother, presumptive father and the child a right of action against him for

purposes of proving a parent-child relationship (or absence of it), while the statute fails to provide him the same right of action. In other words, says the putative father, the statute does not give me a right of action which would allow me to overcome the presumption of natural parenthood in the wife's husband with the resulting assumption of the lawful rights and obligations of parenthood in me. See § 14-2-104, W.S. 1977.

It is argued by the mother, presumptive father and child that this statute is not available to the putative father for these purposes because--in a suit such as this where he seeks to assert the parent-child relationship--the putative father has no standing. The logic of the argument is that a putative father had no standing at common law to upset the family unity with an attack upon the presumption of parenthood which the presumptive father enjoys--the statute gives him no such standing--and thus he has no

standing in the case at bar. I understand this to be the position of Justice Thomas as expressed in his separate concurring opinion. It is urged that for these reasons, the putative father's constitutional rights have not been infringed upon.

The opinion of the majority disposes of the appeal on the grounds that the denial of appellant's petition, i.e., his right to attack the presumption of fatherhood in the mother's husband, is bottomed in the fact that the statute which gives only the mother, presumptive father and child a right of action does not violate the putative father's equal-protection and due-process rights as guaranteed by the Federal and State Constitutions. Of course, this manner of resolution presumes standing while rejecting the alleged constitutional shortcoming. In other words, according to the majority view, the putative father finds himself in a "Catch-22" situation 1/ because, while he gets

to go to court, he can not win when he gets there, no matter what his legal or factual position might be.

I want to go back and see whether the appellant lacks standing; if he has no standing as Justice Thomas suggests, that ends it and I need not thereafter inquire whether the statute violates equal-protection and due-process concepts.

STANDING

Where does the appellant find such standing as will permit him to assert his parent-child relationship, thereby allowing him to test the presumption of fatherhood in the wife's husband? Or, does the presumption--so far as the appellant is concerned--stand irrebuttable because the law does not give him access to the courts for the purpose of lodging an attack against it?

Preliminarily, I would observe that a putative father has standing to assert

paternity if there is no presumptive father. Section 14-2-104(c), W.S. 1977 provides:

> "An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under W.S. 14-2-102 may be brought by the child, the department of health and social services, the mother or personal representative of the child, the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor." (Emphasis added.)

Likewise, a man whose position is that he is not the father could utilize the

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1/ Justice Brown told us in Panhandle Eastern Pipe Line Company v. Smith, Wyo. 637 P.2d 1020, 1023, n.3 (1981) what "Catch-22" meant when he said:

> "In the novel Catch-22, Group Headquarters let its men request a medical release if they thought they were on the

constitutional defenses upon which the appellant relies here as an affirmative response (equal protection and due process) should he find himself a defendant in an action where either the mother, presumed father or the child were attempting to establish his paternity through the utilization of § 14-2-104 W.S. 1977. But that is not the case here. In this case the appellant-biological father attacks a statute which denies him the right to assert his parental rights by urging equal-protection and due-process violations which arise out of the wording of the statute and the manner that it

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verge of a nervious collapse. When Yossarian, a bombardier, asked the doctor for a release, the doctor refused. He told Yossarian the catch was that his recommendation for a release had to be approved by Group, and Group never approved any of them. The doctor later said to Yossarian that Group couldn't let the crazy people go home, as no one else but a crazy person would fly

has, under these particular facts, been applied to his detriment.

When confronted with the standing defense, he argues that he has a fundamental right in the natural father-child relationship which is assertable against the presumption of fatherhood in the mother's husband. I would agree that he does have such standing because he does have the right which he asserts. See DS v. Dept. of Public Assistance and Social Services, Wyo., 607 P.2d 911 (1980), discussed herein, infra. See also the recent 10th circuit decision in Blair v. Supreme Court of the State of Wyoming, _____ F.2d_____, (case # 80-2180 decided Feb. 17, 1982), where Circuit Judge Seymour speaking for the court, said:

> "We recently recognized in Wise v. Bravo, No. 80-1494,

> the bombing missions willingly. J. Heller, Catch-22, Simon and Schuster (1955, 1961)."

> slip op. at 5 (10th Cir., filed Dec. 14, 1981), that the relationship between parent and child is constitutionally protected." Slip opinion at p. 2.

While the statutes do not give the putative father a right of action to assert parenthood, they do identify him as having a legal "parent and child relationship" with his offspring, and they make no exception to this relationship where the child has a presumptive father. Section 14-2-101, W.S. 1977 provides in relevant part:

> "(a) As used in W.S. 14-2-101 through 14-2-120, 'parent and child relationship' means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes both the mother and child relationship and the father and child relationship and extends equally to every child and parent regardless of the marital status of the parents." (Emphasis added.)

By way of comment, it can surely be said that the putative father is one with respect to whom the law confers or imposes the

> "* * * rights, privileges, duties and obligations * * *"

contemplated by this statute. To reach this conclusion, we need only to recall that § 14-2-104, W.S. 1977, supra, allows the mother, child and presumed father to establish parenthood in the biological father. Unquestionably, this imposes upon the natural father a duty or obligation as contemplated by statute ("duties and obligations"), even where, as here, the child is conceived by unwed parents but born to the mother after marriage to another man who is, therefore, the presumptive father.

Section 14-2-101(b) enumerates those capable of establishing the parent-child relationship and at subsection (ii) provides that "the natural father" is one such person.

A man who is married to a woman at a time when she bears a child is, under § 14-2-102, the presumptive father of the child. The statute says:

> "(a) A man is presumed to be the natural father of a child if:
>
> "(i) He and the child's natural mother are or have been married to each other and the child is born during the marriage. * * *."

But the presumption of fatherhood is rebuttable.

Subsection (b) provides:

> "(b) A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two (2) or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. A presumption is rebutted by a court decree establishing paternity of the child by another man."

Therefore--in my judgment at least--the

presumption of fatherhood in the wife's husband is only that--a presumption--capable, as with other presumptions of being rebutted.

This leaves the question: Is the biological father one of those who may rebut the presumption?

I would answer this question in the affirmative. I would say the putative father has standing according to the following analysis.

We have a body of statutory law which says the following things: The putative father enjoy a parent-child relationship with his son. This father can assert his rights with respect to this relationship where there is no presumed father. Where there is a presumed father, says the statute, the presumption of parenthood is not conclusive but is subject to rebuttal--even by the presumptive father as well as the mother and/or the child. While § 14-2-102 provides

that any of the presumptions of fatherhood are subject to rebuttal, § 14-2-104 fails to give a right of action for this purpose to the natural father while furnishing such right of action to the mother, presumptive father and child.

Since the presumption is rebuttable and the putative father has an interest, i.le., a parent-child relationship interest, I would conclude that he has standing to establish his interest and permit it to work for him in whatever way the law allows.

EQUAL PROTECTION

Once the putative father is permitted to go to court, i.e. once his standing is established, the question is: What rights may he enforce?

I would hold that he can successfully attack the constitutionality of a statute which fails to give him a right of action to enforce his parent-child relationship while such statute gives this right to the mother

and gives to her the further right to allege, prove and enforce the putative father's parent-child obligations--as being in violation of his rights of equal protection under the Federal and Wyoming Constitutions.

The majority opinion rejects appellant's constitutional attack when it holds that the statutory scheme is not an invidious, gender-based classification and does not affect a substantial interest of the appellant so as to deny him equal protection and due process of law. With both of these conclusions I must disagree.

The statute, in my judgment, is unconstitutional because it impermissibly discriminates between natural mothers and those who assert paternity or are admitted to be the natural father in that the classification, while substantially relating to an important government interest, does not, by its own terms achieve the protection of the worthwhile purpose that it proclaims.

The statutory scheme contained in § 14-2-104 invidiously discriminates on the basis of sex in one obvious way. Uner the statute the biological mother is permitted to bring an action to disrupt the family unit (consisting of the mother, presumed father and child) in order to declare paternity in another--namely, the biological father (as in a bastardy proceeding), while the biological father is prevented from doing the same, i.e., bringing suit to establish his parent-child relationship, which, perforce, would carry with it the self-same family unit disruption and bastardy ramifications.

In other words, why is it--asks the natural father--that the law permits the mother of the child born of our union to institute a suit against me which has the effect of interrupting the harmony of the family unit (which, arguendo, she enjoys with our child and the presumed father) the purpose of which suit is to prove that I am the

biological father for purposes of enforcing child support and either parental obligations--thus causing the child to be exposed as a bastard--while I, the natural father do not have standing to assert my rights of parenthood--which assertion will admittedly have the identical socially unacceptable consequence, i.e., the potential disruption of the family unit and the bastardization of the child?

The marjority opinion justifies the classification described by the statute on the ground that the legislative enactment is simply recognizing an obvious difference between the sexes, which is that women bear children and give birth to them, while men do not. This biological truism does not impress me as one which the statute is designed to recognize as a reason for giving the natural mother the right to bring a paternity suit while denying this same right to the natural father. In any case, the fact that the mother

bears and births the child while the father does not, is not perceived to be such a classifying incident as should preclude the mother from suing the natural father to establish the parent-child relationship. So why should it be such a gender-based classification as should preclude the putative father's suit to establish the same thing?

Even though the mother carried and gave birth to the child, this bears no significant relationship to the question which is why she can lawfully disrupt the family unit and

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2/ In Michael v. Superior Court of Sonoma County, supra, the Supreme Court of the United States, in a plurality opinion, upheld the California statutory rape statute which allowed only men to be prosecuted because a purpose of the statute was to recognize that only minor females could become pregnant as a

bastardize the child while at the same time the biological father is precluded from protecting his right to establish his parent-child relationship, with identical attendant results. To recognize a sex distinction, as in Michael v. Superior Court of Sonoma County, 450 U.S. 464, 101 S.Ct. 1200, 67 L.Ed.2d 437 (1981), 2/ is not one of the purposes of § 14-2-104. Instead, the statute is admittedly designed to legitimize the child and encourage family unity. The method utilized to achieve this purpose is fault-ridden because the scheme permits the mother, the presumptive father or the child to transgress the statutory goals, while denying the natural father the same right. For me, such a classification is clearly invidious, and the statute would have to

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result of the illegal sexual act. A primary purpose of the statute was considered to be the reduction of teenage pregnancy.

satisfy the proper constitutional scrutiny before I could hold it constitutional.

The proper scrutiny or standard to be utilized in determining whether or not a given classification based on sex violates the equal-protection clause has been stated on several occasions. In order to pass constitutional muster, the gender-based classification must further important governmental objectives and be substantially related to the achievement of those goals. The equal-protection review standard was described in Caban v. Mohammed, 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979) as follows:

> "Gender based distinctions must serve (important) governmental objectives and must be substantially related to the achievement of these objectives in order to withstand judicial scrutiny under the equal protection clause." (Emphasis added.) 441 U.S. at 388.

See also; Craig v. Boren, 429 U.S. 190, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976); Reed v. Reed, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971).

Nobody could quarrel with the governmental objectives that are identified and embraced in the majority opinion. Those objectives are said to be the protection of a state interest in legitimizing the child, the result of which is to further and strengthen the unity of family life. Such interests certainly rise to a level of important governmental objectives. R. McG. v. J.W., Colo., 615 P.2d 666, 670 (1980). The problem in this case is that we really are not permitted to judge this classification on the issue of whether or not we are pursuing a worthwhile governmental interest because the statute itself destroys its own presumed high purpose. That is--if it is the purpose of the statute that the family unit be preserved (and thus the necessity for refusing to give to the

father a right of action to establish the parent-child relationship) this purpose self-destructs when, in the next breath, we permit the mother to file suit against the natural father, with the same undesirable consequence that the State relies upon to justify the classification in the first place.

The issue in this appeal is not, therefore, whether the governmental ends are worthwhile, but whether or not the means sought to attain them are faulty. It is not sufficient that the ends are of high purpose; they must be not only that--of high purpose--but the classification must also be shown to be constituted in a way to reasonably further these ends. Furthermore, the classification may not be arbitrary, must be reasonable and must be bottomed in a concept of difference which has a logical relation to the legislation's objective so that all who are similarly situated will be treated alike. Caban v. Mohammed, 441 U.S. at 391.

> "* * * (T)he unquestioned right of the State to further these desirable ends by legislation is not in itself sufficient to justify the gender-based distinction * * *. Rather, under the relevant cases applying the Equal Protection Clause it must be shown that the distinction is structured reasonably to further these ends * * * (S)such a statutory 'classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. * * *'" Caban v. Mohammed, 441 U.S. at 391.

In this case, the State cannot demonstrate why the biological mother, of necessity, must be treated in a manner different from the way the biological father is treated. To allow the natural mother, according to her own whims, to bring a paternity action, even when the family unit is strong, and without a showing of some kind of necessity--financial or otherwise-- is to

grind into the legislative scheme a means by which the legitimate and worthwhile statutory objectives can be methodically destroyed. To further point out the inherent weaknesses of the statute, it is to be remembered that the presumed father, under § 14-2-102(a), can also, at his own whim, destroy or negate the government's goals.

In analyzing this statute with respect to an equal-protection attack, the Colorado Supreme Court in R. McG. v. J.W., supra, puts it well when it says:

> "This statutory scheme creates more than a difference in treatment of natural mothers and fathers. It establishes contrary treatment. Although a statutory classification under the intermediate level of scrutiny need not be tailored precisely to the interest sought to be achieved, it must at least mesh substantially with the purpose that the statutory classification is designed to accomodate. The statutory classification and corresponding difference

in treatment created by section 19-6-107(1) fail to pass constitutional muster under equal protection doctrine. Section 19-6-107(1) exemplifies a gender-based classification predicated on an overbroad generalization that a mother has a legitimate interest in establishing a determination of paternity in a non-spousal rather, while such father has no interest in establishing a determination of paternity in himself. See, e.g. Caban v. Mohammed, supra; Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); cf. Quilloin v. Walcott, 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978) (unwed father, who never sought custody of eleven-year-old minor child, was granted full hearing on his interest in child, but his interest cannot prevent child's adoption by natural mother's husband). Under the circumstances present here, the claiming natural father, no less than the mother, must have the right to establish the significant relationship of paternity as to the child he has allegedly sired." Id. at 671.

Therefore, the classification is not substantially related to the achievement of

important and valid governmental objectives, and, as to the putative father, results in a denial of equal protection of the law.

DUE PROCESS

I also believe that the failure of § 14-2-104 to grant the putative father standing to establish his paternity denies him due process of law. The majority opinion concludes that the biological father is not denied due process because he fails to demonstrate any fundamental interest which is infringed upon, or which would require some form of hearing. I disagree with this conclusion because it flies directly in the face of Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). In Stanley v. Illinois, the United States Supreme Court said:

> "The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain

that the interest of a parent in the companionship, care, custody, and management of his or her children 'come(s) to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.' Kovacs v. Cooper, 336 U.S. 77, 95, 69 S.Ct. 448, 458, 93 L.Ed. 513 (1949) (Frankfurter, J., concurring).

"The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed, 'essential,' Meyer v. Nebraska 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923), 'pasic civil rights of man.' Skinner v. Oklahoma, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942), and '(r)ights far more precious . . . than property rights,' May v. Anderson, 345 U.S. 528, 73 S.Ct. 840, 843, 97 L.Ed. 1221 (1953). 'It is cardinal with us that custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.' Prince v. Massachusetts, 321 U.S.

158, 166, 64 S.Ct. 438, 442, 68 L.Ed. 645 (1944). The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, Meyer v. Nebraska, supra, 262 U.S. at 399, 43 S.Ct. at 626, the Equal Protection Clause of the Fourteenth Amendment, Skinner v. Oklahoma, supra, 316 U.S., at 541, 62 S.Ct., at 1113, and the Nineth Amendment. Griswold v. Connecticut, 381 U.S. 479, 496, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965) (Goldberg, J., concurring).

"Nor has the law refused to recognize those family relationships unlegitimized by a marriage ceremony. The Court has declared unconstitutional a state statute denying natural, but illegitimate, children a wrongful-death action for the death of their mother, emphasizing that such children cannot be denied the right of other children because familial bonds in such cases were often as warm, enduring, and important as those arising within a more formally organized family unit. Levy v. Louisiana, 391 U.S. 68, 71-72, 88 S.Ct. 1509, 1511, 20 L.Ed.2d 436 (1968). 'To say that

> the test of equal protection should be the "legal" rather than the biological relationship is to avoid the issue. For the Equal Protection Clause necessarily limits the authority of a State to draw such "legal" lines as it chooses.' Glona v. American Guarantee & Liability Ins. Co., 391 U.S. 73, 75-76, 88 S.Ct. 1515, 1516, 20 L.Ed.2d 441 (1968).
>
> "These authorities make it clear that, at the least, Stanley's interest in retaining custody of his children is cognizable and substantial." Stanley v. Illinois, supra., 405 U.S. at 651-652.

We embraced the Stanley doctrine in DS v. Dept. of Public Assistance & Social Services, supra, 607 P.2d at 918, where we said:

> "In addition, we are helped in our task by a large body of state and federal constitutional law defining the interests individuals have in their family associations. The right to associate with one's immediate family is a fundamental liberty protected by the state and federal constitutions. Stanley v. Illinois, 405

U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) (integrity of the family unit protected by the due-process clause of the Fourteenth Amendment); and Shapiro v. Thompson, 394 U.S. 618, 634, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969) (implication that liberties guaranteed by the federal constitution are fundamental). See, also, State ex rel. Heller v. Miller, 61 Ohio St 6, 399 N.E.2d 66 (1980). Analysis of the Wyoming Constitution and case law also leads to the conclusion that the right to associate with one's family is a fundamental liberty. Article 1, Sections 2, 6, 7 and 36, Wyoming Constitution; Washakie County School District Number One v. Hershler, Wyo., 606 P.2d 310 (1980); Matter of Adoption of Voss, Wyo., 550 P.2d 481 (1976); and In re Adoption of Strauser, 65 Wyo. 98, 196 P.2d 862 (1948)."

See also Blair v. Supreme Court of the State of Wy oming, supra.

It is well established, therefore, that the putative father has a constitutionally protected right to participate in the support, maintenance and upbringing of his minor child.

It is an interest that the state cannot ignore. In my judgment, it is also one that I believe the state cannot take away without providing the putative father with a hearing. As noted earlier, the statute is designed to

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3/ In Stanley v. Illinois, supra, Caban v. Mohammed, supra, and Quilloin v. Walcott, infra, the Supreme Court of the United States placed some significance on the fact that the challenging party had previously established some parent-child relationship. Such factors,

achieve important governmental objectives. However, here § 14-2-104 attempts to ignore the biological father's constitutional rights to establish a relationship with the child he has sired. In my mind, the scheme is a blatant denial of due process because the presumption of fatherhood in the mother's husband operates to prohibit the natural father from establishing the parent-child relationship. 3/ In my judgment, the putative father cannot constitutionally be precluded from establishing the father-child relationship without the state at least affording him a right to be heard. Arguably,

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however, merely served to further tip the scales in the balancing process in favor of the natural father's right to due process. Here, the legislative scheme, in my mind, is a stronger denial of due process because the state attempts to reject the natural father's rights without giving him the opportunity to

under Quiloin v. Walcott, 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978), the court could deny the putative father the right to pursue his parental rights under his established relationship for the reason that it would not be in the child's best interests, but this result could only be reached after the putative father is provided with a hearing on the matter. Since § 14-2-104 fails to provide for such a procedure it is a denial of the biological father's rights of due process.

Finally, I cannot adopt the position taken by Justice Thomas in his concurring opinion, since he would only give standing to a biological father who arguably would not desire to establish the father-child relationship in the first place.

I would have reversed.

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ever establish them.

MANDATE ON AFFIRMANCE

IN THE SUPREME COURT
OF THE
STATE OF WYOMING

To the Honorable the District Court of the County of Campbell, GREETING:

WHEREAS, A on the 10th day of July, A. D. 1981, filed a record on appeal in the Supreme Court of the State of Wyoming to obtain the reversal of a judgment rendered by you on the 22nd day of May, A. D. 1981, and entered on the 22nd day of May, A. D. 1981, in a cause pending before you wherein A was plaintiff and X, Y, and Z were defendants; and

WHEREAS, The following proceedings were had and entered in the Supreme Court in said cause on the 8th day of March, A. D. 1982, to-wit:

"This cause having been heretofore taken under advisement, the court, being now fully apprised in the matter, does say and find there is no reversible error in the record of

the proceedings of the District Court of Campbell County.

"It is therefore ordered and adjudged for the reasons stated in the opinion herein this day delivered and filed that the judgment of the said district court be, and the same is hereby, affirmed.

"It is further ordered that the costs of this appeal be taxed against the appellant, and the court does certify there was reasonable cause for the appeal."

COSTS IN THE SUPREME COURT: Brief of appellees, $11.25.

NOW, THEREFORE, You are commanded without delay to carry into execution and effect the judgment so as aforesaid rendered by you, in the manner provided by law.

WITNESS, The Honorable Robert R. Rose, Jr., Chief Justice of said Supreme Court, and the Seal thereof, at Cheyenne, this 24th day of March, A. D. 1982.

S/Rita M. White

Clerk.

IN THE SUPREME COURT, STATE OF WYOMING

A, Appellant, (Petitioner),	)	
vs.	)	No. 10789
X, Y, and Z, Appellees, (Respondents).	)	

APPELLANT'S OPENING BRIEF

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STATEMENT OF THE CASE

The unwed father, A, brought an action to establish paternity and included by amended pleadings, his ex-wife, her husband and the child born during the pendancy of that marriage. It was stipulated by the parties, prior to hearing the issue of standing by the court, that blood tests should be taken and the court so permitted said blood tests to be taken. This was done with the belief that the blood tests would indicate that the mother and the unwed father were not the parents of the child born during the marriage of the mother and the legal father. The blood tests otherwise indicated and there was a 98.82% positive indication that the plaintiff bringing the action was the father. Dan R. Price was then appointed as attorney for the minor child.

A hearing was then held relative to the issues of standing and the statutory rights of the plaintiff to bring the action. Trial

briefs were filed by the attorney for the legal mother and father, defendants, by the attorney for the child and by the attorney for the unwed father, Mr. A.

The trial court then filed a letter of opinion. The court found that the issue of the case was one of legal issues. The District Court stated that the omission was not a legislative oversight but intentional. The court went on to state that even if plaintiff has no standing, that plaintiff argued that he should have standing based upon the due process and equal protection causes of the United States Constitution. The trial court found that the balancing of social values made by the legislature, the courts must regard that the biological father's rights are subordinate to the collective rights of the child, the mother and the father in the family unit. It is from this finding the plaintiff filed notice of appeal and appeals herewith.

STATEMENT OF FACTS

The unwed father, A, and Y were married and then divorced. The divorce decree was dated June 26, 1979. Some time after the divorce, A & Y cohabited and a child was conceived. Y & Z then married on February 8, 1980, and the child X was born August 3, 1980. X was given the same name of Z and Z was listed as the father on the birth certificate.

This action was brought under Wyoming Uniform Parentage Act.

The mother denied A was the father and agreed to blood tests in order to prove her assertion. The tests were administered. The results indicated 98.82% chance that A was the father of X.

The trial court then ruled that A lacked standing to bring the action to establish paternity and dismissed the action.

ARGUMENT

I. THE UNWED BIOLOGICAL FATHER DOES HAVE STANDING UNDER WYOMING STATUTES TO BRING AN ACTION TO ESTABLISH THE PATERNITY OF A CHILD AGAINST A PRESUMED FATHER.

Wyoming adopted the uniform parentage act in 1977. Seven other states have adopted this uniform act with various changes. Wyoming omitted from §14-2-102 the following language:

> He acknowledges his paternity of the child in writing filed with the appropriate court or vital statistics bureau, which shall promptly inform the mother of the filing of the acknowledgment, and if she does not dispute the acknowledgment within a reasonable time after being informed thereafter, in writing filed with the appropriate court or vital statistics bureau. If another man is persumed under this section to be the child's father, acknowledgments may be affected only with the written conscent of the presumed father or after the presumption has been rebutted.

Clearly this portion of the Wyoming Statute would of given the plaintiff standing to bring the action, however, while omitting

it, the Wyoming legislature did not clearly state that unwed fathers have no standing to bring the action. They made provisions in the statute for other factual situations where there wasn't a presumed father or for unwed fathers to come forward, but they didn't clearly exclude the unwed fathers.

In fact, the purpose of the statute as set forth in Wyoming Statute §14-2-101 states:

> (a) As used in W.S. 14-2-101 through 14-2-120, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes both the mother and child relationship and the father and child relationship and extends equally to every child and parent regardless of the marital status of the parents.
>
> (b) The parent and child relationship may be established between a child and:
>
> (i) The natural mother by proof of her having given

> birth to the child or as provided by W.S. 14-2-101 through 14-2-120;
>
> (ii) The natural father as provided by W.S. 14-2-101 through 14-2-120;
>
> (iii) An adoptive parent by proof of adoption.

If the words of this statute are to be given any meaning, then the unwed father must have standing to bring this action to establish his paternity. And in fact, by excluding the language in §14-2-102, the legislature of Wyoming may have merely objected to the procedure of filing with the appropriate court an acknowledgment of paternity, and the forcing of the burden upon the mother to object to the paternity.

Of course, the legal presumption of the paternity of the new father, the presumptive father, may be rebutted as set forth in Wyoming Statute §14-2-102(b) which states:

> "A presumption under this section may be rebutted by the appropriate

> action only by clearing, convincing evidence. If two or more presumptions arise which conflict with each other, the presumption on which the facts are founded is the weight of your consideration of the policy and logic controls. A presumption is rebutted by a court decree establishing the paternity of the child by another man."

This statute may provide some guidance to the court in deciding the issue of the unwed father. In addition thereto, Wyoming Statute §14-2-106(b) implies that the mother would be subject to the proceedings under this act and submitting to the jurisdiction of the court. And of course, Wyoming Statute §14-2-118 states that any interested party may bring an action to determine the existence and non-existence of the mother/child relationship. And, insofar as practical provisions of Wyoming Statute §14-2-101 through §14-2-120 are applicable, the father/child relationship applies. This statute at least suggests that any person interested in the existence of the

father/child relationship as far as applicable may bring it.

In Vigil v. Tafoya, 600 P2d 721 (WY. 1979), the Wyoming Supreme Court in its only case under the Wyoming Paternity Act suggests that afiliation proceedings are a creation of statute and that said uniform act is remedial in nature, it should be liberally construed and that liberal construction leads the conclusion that the legislature intended that the act apply to all children whenever born. Again, this leads the conclusion that a child born during wedlock is subject to having the presumptive paternity established by the challenge by the unwed father.

The plaintiff has suggested that the Vigil case does not apply because it involves the question of retroactive application of the statute of limitations contained within the act, and to construe it to include, to broaden the statute to include a party which they maintain is not included in the act, which

plaintiff maintains is included in the act, is contrary to the First National Bank and Trust Company of Wyoming v. Brenner, 504 P2d 1367 (WY. 1973) where the court said liberal construction is never a vehicle for actual violence to the thing construed.

However, the legislature, by including the language in §14-2-101 does not do violence to the act and liberal construction clearly puts it within the bounds of the unwed father, bringing the action.

Two states have considered the problem of the unwed father. The first case, and the case most particularly in point, is the Colorado case of R. McG. & C. W. v. J. W. & W. W., 615 P2d 666, (CO. 1980), where the plaintiff's father brought a suit to establish his paternity against the defendant, husband and wife under the Uniform Parentage Act. In that case, the Colorado case is primarily one that goes to constitutional arguments of equal protection.

The California case, In re Lisa R. 532 P2d 123, (CAL. 1975) involved the termination of parental rights where the State was seeking to terminate the parental rights of the minor children. It should be noted from the equities involved in the Lisa R. case that the presumptive father was dead and that the natural mother was not a desirable mother and that the biological father who was seeking to establish his paternity was a sympathetic plaintiff, and they turned the issue on the presumption which precludes the right of the father in the instant circumstances and his right to offer and prove that he is the father is an unreasonable arbitrary, capricious and is a denial of due process.

Let us examine those arguments in greater detail.

In the Wyoming case of D. S. & R. S. v. The Department of Public Assistance and Social Services, 607 P2d 911, (WY. 1980) the Court found that the right to associate with ones

immediate family is a fundamental liberty protected by the State and Federal Constitutions. This position is supported by the U. S. Supreme Court case of Stanley v. Illinois 405 U.S. 645 (1971) and by the Wyoming Constitution Article I, Section 2, 6, 7 and 36. The Stanley court states that "the right to conceive and raise ones children have been deemed essential": "The basic rights of civil man and the rights are far more prescious than property rights": "It is cardinal with us that the custody and care and nurture of the child reside first with the parents whose primary function and freedom includes the preparation for obligations the State can neither supply nor hinder." The court then proceeds to say that there are many areas in which the law has refused to recognize, that family relationships are un-legitimatized by a marriage ceremony. The courts have declared unconstitutional state statutes denying natural with the illegitimate

children and the wrongful death action for the death of their mother.

The Supreme Court of Colorado found that the Uniform Parentage Act denied the natural father the opportunity to establish a constitutional, significient relationship while affording the natural mother the same judicial access. This contrary treatment of male parents violates the equal protection clause. The Colorado Court subjected the Uniform Parentage Act to the test of Caban v. Mohammed, 441 U.S. 380, (1979) as the distinction and the statute must serve some important governmental objective and be substantially related to the achievements of these objectives.

The Colorado Supreme Court says that the substantial govermental interest in insulating a continuing family relationship from the potentially disruptive effects of a judicial determination of a paternity in another on questions that is not necessary to resolve

under the Uniform Parentage Act, because the Uniform Parentage Act permits the natural mother to undue the States interest in preserving family stability by seeking both a declaration of non-paternity in the presumed father and a declaration of paternity in the unwed father. Ibid, 670.

The Supreme Court goes on to say that a gender base classification is predicated on an overboard generalization that the mother has a legitimate interest in establishing a determination of parentity of the non-spousal father while the father has no interest in establishing the determination of paternity in himself, Ibid 671.

There are substantially two questions presented by this appeal. The first one being the equal protection and the second, due process. Clearly, the Colorado case addresses itself to the equal protection. The Stanley v. Illinois case addresses itself both to equal protection and due process and due

process is the second part of the problem. Is the punative or unwed father entitled to a hearing to determine his paternity or his fitness for paternity. The District Court said all argument of equal protection and due process is predicated on the United States Constitution and the State Constitution is applicable. The United States Constitution sets forth both the due process clause and the equal protection clause in the Fourteenth Amendment where it says, "nor shall any state deprive any person of life, liberty or property without due process of law nor to deny any person within its jurisdiction equal protection of the laws." Wyoming Constitution sets out a similar provision in Article II of the Constitution which says, "the inherit right to life, liberty and the pursuit of happiness all members of the human race are equal." In Article VI it sets out the due process of law which says, "that no person shall be deprived of life, liberty or property

without due process of law." The Wyoming Courts then have clearly recognized that the right to have ones family and associate with ones family is founded in the constitution. In argument then, it would be a denial of equal protection by both the U. S. and State Constitutions to prohibit the plaintiff in this case from seeking to establish his rights as a parent, to have the love and companionship of his natural child conceived out of wedlock and born in wedlock to a stranger.

Harra v. Larche 363 U.S. 420, (1960), sets forth a due process test which would afore a hearing so that the biological father's indication of interest in the child could be considered in the relation to the possible harm to the family unit. The balancing test fails in regard to that the hearing and the treat of the hearing is as disruptive as to the actual determination of paternity would be itself. And the District

Court points this out in their memorandum decision. But how can the situation be any different than a divorce where there is a disruptive family situation and strangers see children by living with one or the other of the custodial parents or the non-custodial parents. The entire difference of the two circumstances is the date of birth rather than the date of conception. And perhaps courts in discussing all matters of life might be well to begin with the date of conception rather than the date of birth, for if the child is conceived out of marriage and born out of marriage, clearly the father has rights and duties and the mother has rights and duties. THe marital act of a contract following that life does not change those rights unless done so by proper proceedings in which the parties have rights to be heard.

CONCLUSION

It is apparent from the Wyoming Uniform Parentage Act that the Legislature omitted the specific section dealing with the ability of the biological father to bring the action. However, there are certain references in the Wyoming Statutes that lead one to the belief that the Legislature intended that the biological father should have standing to bring the action to establish his paternity. Those sections say the father child relationship extends equally to every parent and every child regardless to the marital status. The portion of the Wyoming Statutes that provides for a rebuttable presumption is important. The portion of the Statutes that provides that regardless of its terms in any agreement between any people does not bar an action under this section is also important. The portion of the statute that says any person who has sexual intercourse in the state is subject to the proceedings would include

the plaintiff. The portions of the statute which set forth that the natural father may in all cases may be made a party to any action to establish paternity, indicate that the Legislature intended that the biological father should have standing to bring the action. Given statutory language the Vigil v. Tafoya case indicates that the Wyoming Statutes should be liberally construed and this liberal construction given the various portions of the statute indicate that the Wyoming Statute provides standing for the biological father. In addition, there is the constitutional problem if the father is not given standing under both In Re Lisa R. and R.M.G. v. J.W. which set forth the due process and equal protection problem. In Re Lisa R. the court found that to deny the biological father was unreasonable arbitrary and capricious and denial of due process. In the Colorado case R.M.G. v. J.W. the court found that when the mother is given the opportunity

to bring the action against the father which she clearly could have under the Wyoming Statute at any time Y could have brought the action against A but to deny the father the same right to bring the action is a denial of equal protection and the contrary treatment of male parents would violate the equal protection clauses of the constitution. It is for these reasons that A is given standing as the biological parent to bring the action against Y, the child and the presumptive father.

CERTIFICATE OF SERVICE

I, John M. Daly, attorney for the appellant, certify that a true and correct copy of the foregoing brief of the appellant was served on appellees by placing a copy of the same in the United States Mail, postage prepaid, addressed as follows on this_____ day of July, 1981:

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ARTICLE 1. PARENTAGE

§ 14-2-101. "Parent and child relationship" defined; how relationship established.

(a) As used in W.S. 14-2-101 through 14-2-120, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes both the mother and child relationship and the father and child relationship and extends equally to every child and parent regardless of the marital status of the parents.

(b) The parent and child relationship may be established between a child and:

(i) The natural mother by proof of her having given birth to the child or as provided by W.S. 14-2-101 through 14-2-120;

(ii) The natural father is provided by W.S. 14-2-101 through 14-2-120;

(iii) An adoptive parent by proof of adoption. (Laws 1977, ch. 174 § 1; 1978, ch. 25, § 1.)

§ 14-2-102. Presumption of paternity; rebuttal thereof.

(a) A man is presumed to be the natural father of a child if:

(i) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred (300) days after the marriage is terminated by death, annulment or divorce or after a decree of separation is entered by a court; or

(ii) Before the child's birth, he and the child's natural mother attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; and:

(A) If the attempted marriage could be declared invalid only by a court, the

child is born during the attempted marriage or within three hundred (300) days after its termination by death, annulment or divorce; or

(B) If the attempted marriage is invalid without a court order, the child is born within three hundred (300) Days after the termination of cohabitation; or

(iii) After the child's birth, he and the child's natural mother married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; and:

(A) He has acknowledged his paternity of the child in writing filed with the state office of vital records services; or

(B) With his consent, he is named as the child's father on the child's birth certificate; or

(C) He is obligated to support the child under a written voluntary promise or by court order; or

(iv) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.

(b) A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two (2) or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. A presumption is rebutted by a court decree establishing paternity of the child by another man. (Laws 1977, ch. 174, § 1; 1978, ch. 25, §1.)

§ 14-2-103. Artificial insemination; consent required; filing thereof; limitation on inspection; legal status of husband and donor.

(a) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated as if he were the natural father of a child thereby conceived. The husband's consent shall be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination and file the husband's consent with the state office of vital records and services, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so do not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(b) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated as if he were not the natural father of a child thereby conceived. (Laws 1977, ch. 174, § 1; 1978, ch. 25, §1.)

§ 14-2-104. Right to bring paternity action; effect of agreements; proceedings when child not yet born.

(a) A child, his natural mother or a man presumed to be his father under W.S. 14-2-102(a)(i),(ii) or (iii) may bring action:

(i) At any time for the purpose of declaring the existence of the father and child relationship presumed under W.S. 14-2-102(a)(i),(ii) or (iii); or

(ii) For the purpose of declaring the nonexistence of the father and child relationship presumed under W.S. 14-2-102(a)(i),(ii) or (iii) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts,

but in no event later than five (5) years after the child's birth. After the presumption has been ebutted, paternity of the child by another man may be determined in the same action if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under W.S. 14-2-102(a)(iv).

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under W.S. 14-2-102 may be brought by the child, the department of health and social services, the mother or personal representative of the child, the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or

a parent of the alleged father if the alleged father has died or is a minor.

(d) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with W.S. 14-2-111 (b) between an alleged or presumed father an the mother or child does not bar an action under this section.

(e) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth except service of process and the taking of depositions to perpetuate testimony. (Laws 1977, ch. 173, § 1; 1978, ch. 25, §1.)

§ 14-2-105. Statute of limitations for paternity actions; effect on probate matters.

An action to determine the existence of the father and child relationship as to a child who has no presumed father under W.S. 14-2-102 may not be brought later than three (3) years after the birth of the child, or later than

three (3) years after the effective date of W.S. 14-2-101 through 14-2-120, whichever is later. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until three (3) years after the child reaches the age of majority. W.S. 14-2-104 and 14-2-105 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise. (Laws 1977, ch. 174 § 1; 1978, ch. 25, § 1.)

§ 14-2-106. Jurisdiction; joinder with action for divorce, etc.; venue.

(a) The district court has jurisdiction of an action brought under W.S. 14-2-101 through 14-2-120. The action may be joined with an action for divorce, annulment, separate maintenance, support or any action affecting the parent and child relationship.

(b) A person who has sexual intercourse in this state which has resulted in the birth of a child who is the subject of the proceedings under W.S. 14-2-101 through 14-2-120, thereby submits to the jurisdiction of the courts of this state in an action brought under W.S. 14-2-101 through 14-2-120. W.S. 5-1-107 shall also apply.

(c) Action may be brought in the county in which the child resides, is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced. (Laws 1977, ch. 174, § 1; 1978, ch. 25, §1.)

§ 14-2-107. Parties; notice and hearing required.

The child shall be made a party to the action. If he is a minor he shall be represented by his guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The natural mother,

each man presumed to be the father under W.S. 14-2-102 and each man alleged to be the natural father may be made parties and shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties. (Laws 1977, ch. 174, § 1; 1978, ch. 25, §1.)

§ 14-2-108. Informal hearing; refusal of witnesses or parties to testify; testimony of physician.

(a) As soon as practicable after an action is brought to declare the existence or nonexistence of the father and child relationship, and informal hearing shall be held. The court may order that the hearing be held before a referee. The public is barred from the hearing. A record of the proceeding shall be kept.

(b) Upon refusal of any witness or party to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant

facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

(c) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged. (Laws 1977, ch. 174, § 1; 1978, ch. 25, §1.)

§ 14-2-109. Blood tests; experts.

(a) The court may, and upon request of a party shall, require the child, mother or

alleged father to submit to blood test. The tests shall be performed by an expert qualified as an examiner of blood types appointed by the court.

(b) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(c) In all cases the court shall determine the number and qualifications of the experts. (Laws 1977, ch. 174, § 1; 1978, ch. 25, §1.)

§ 14-2-110. Evidence relating to paternity.

(a) Evidence relating to paternity may include:

(i) Evidence of sexual intercourse between mother and alleged father at any possible time of conception;

(ii) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(iii) Blood test results weighted in

accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(iv) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may and upon request of a party shall require the child, the mother or the man to submit to appropriate tests; and

(v) All other evidence relevant to the issue of paternity of the child. (Laws 1977, ch. 174, § 1; 1978, ch. 25, § 1.)

§ 14-2-111. Recommendations for settlement; acceptance or refusal thereof; dismissal based on blood tests.

(a) On the basis of the information produced at the pretrial hearing, the judge or referee conducting th hearing shall evaluate the probability of determining the existence or nonexistence of the father and child

relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties which may include any of the following:

(i) That the action be dismissed with or without prejudice;

(ii) That the matter be compromised by an agreement among the alleged father, the mother and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee shall consider the best interest of the child in light of the

factors enumerated in W.S. 14-2-113(c), discounted by the improbability as it appears to him of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential and may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; or

(iii) That the alleged father voluntarily acknowledge his paternity of the child. at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determing the existence or

(b) If the parties accept a recommendation made in accordance with subsection (a) of this

section, judgment shall be entered accordingly.

(c) If a party refuses to accept a recommendation made under subsection (a) of this section and blood tests have not been taken, the court shall require the parties to submit to blood tests if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(d) The guardian ad litem of the child may accept or refuse to accept a recommendation under this section.

(e) The informal hearing may be terminated and the action set for trial if the judge or referee finds it unlikely that all parties would accept a recommendation he might make under subsections (a) or (c) of this section.

(f) If the scientific evidence resulting from the blood tests conclusively shows that the defendant could not have been the father,

the action shall be dismissed. (Laws 1977, ch. 174, § 1; 1978, ch. 25, §1.)

§ 14-2-112. Civil action; testimony and admissibility of evidence; demand for jury.

(a) An action under this act (§§ 14-2-120) is a civil action governed by the Wyoming Rules of Civil Procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. W.S 14-2-108(b) and (c), 14-2-109 and 14-2-110 apply.

(b) Testimony relating to sexual access to the mother by an unidentified man at any time or y an identified man at a time other than the probable time of conception of the child is inadmissible as evidence unless offered by the mother.

(c) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with

the mother at or about the probable time of conception of the child is admissible as evidence only if the alleged father has undergone and made available to the court blood tests which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

(d) The trial shall be by the court, without a jury, unless either party demands a trial by jury. (Laws 1977, ch. 174, § 1; 1978, ch. 25, §1.)

§ 14-2-113. Effect of judgment or order; new birth certificate; provisions for support, etc.; determination of support; continuing jurisdiction.

(a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued under W.S. 14-2-120.

(c) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(d) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic

payments of support. The court, as it deems just, may limit the father's liability for past support of the child to the proportion of the expenses already incurred.

(e) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts including:

(i) The needs of the child;

(ii) The standard of living and circumstances of the parents;

(iii) The relative financial means of the parents;

(iv) The earning ability of the parents;

(v) The need and capacity of the child for education including higher education;

(vi) The age of the child;

(vii) The financial resources and the earning ability of the child;

(viii) The responsibility of the parents

for the support of others; and

(ix) The value of services contributed by the custodial parent.

(f) The court has continuing jurisdiction to modify a judgment or order made pursuant to W.S. 14-2-101 through 14-2-120. (Laws 1977, ch. 174, § 1; 1978, ch. 25, §1.)

§ 14-2-114. Fees and costs.

The court may order reasonable fees of counsel, experts and the child's guardian ad litem, and other costs of the action and pretrial proceedings including blood tests, to be paid by the parties in proportions and at times determined by the court. (Laws 1977, ch. 174, § 1; 1978, ch. 25, §1.)

§ 14-2-115. Court order for support payments; failure to obey.

(a) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under W.S. 14-2-101 through 14-2-120 or under prior law, the court may

order support payments to be made to the mother, the clerk of the court or a person, corporation or agency designated to administer them for the benefit of the child under the supervision of the court.

(b) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply. (Laws 1977, ch. 174, § 1; 1978, ch. 25, §1.)

§ 14-2-116. Right to counsel; free transcript for appeal.

(a) At the pretrial hearing and in further proceedings any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel, the cost to be assumed by the department of health and social services.

(b) If a party is financial unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes

of appeal. (Laws 1977, ch. 174, § 1; 1978, ch. 25, § 1.)

14-2-117. Confidentiality of proceedings and records.

Notwithstanding any other law concerning public hearings and records, any hearing or trial held under W.S. 14-2-101 through 14-2-120 shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records other than the final judgment pertaining to the action or proceding, whether part of the permanent record of the court or of a file in the state office of vital records services or elsewhere, are subject to inspection only by court order. (Laws 1977, ch. 174, § 1; 1978, ch. 25, § 1.)

§ 14-2-118. Action to declare mother and child relationship.

Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as

practicable, the provisions of W.S. 14-2-101 through 14-2-120 applicable to the father and child relationship apply. (Laws 1977, ch. 174, § 1; 1978, ch. 25, §1.)

§ 14-2-119. Written promise to furnish support; confidentiality thereof.

(a) Any promise in writing to furnish support for a child growing out of a presumed or alleged father and child relationship does not require consideration and is enforceable according to its terms subject to W.S. 14-2-104 (d).

(b) In the best interest of the child or the mother, the court may and upon the promisor's request shall order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise. (Laws 1977, ch. 174, § 1; 1978, ch. 25, § 1.)

14-2-120. Preparation of new birth certificates; contents and

confidentiality.

(a) Upon order of a court of this state or upon request of a court of another state, the state office of vital records services shall prepare a new certificate of birth consistent with the findings of the court.

(b) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.

(c) The evidence upon which the new certificate is made and the original birth certificate shall be kept in a confidential file and shall be subject to inspection only by court order. (Laws 1977, ch. 174, § 1; 1978, ch. 25, § 1.)

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No. 81-2344

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1981

A,

Petitioner,

vs.

X, Y, & Z

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SHEEHAN, STEVENS & SANSONETTI

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On Appeal From
The Supreme Court of Wyoming

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WYOMING

I N T R O D U C T I O N

Petitioner contends that he, as a putative father, has been denied Equal Protection and Due Process in violation of Section One of the Fourteenth Amendment to the United States Constitution, by the decision of the District Court, Campbell County, Wyoming, as upheld by the Supreme Court of the State of Wyoming. The State Supreme Court held the petitioner has no standing to file a suit under the Wyoming Uniform Parentage Act to attempt to establish he is the biological father of a child born during the marriage of the natural mother and her husband, the presumed father. The Supreme Court

of the State of Wyoming in its decision held the petitioner has no standing and is not denied equal protection in that the legislative classification between natural mothers and putative fathers passes the Constutional standard of a substantial relationship to an important governmental interest. The Court held the petitioner was not denied due process in that the governmental interest preventing attacks on the family unit and legitimacy of the child outweighed the private interest of the putative father.

STATEMENT

Petitioner brought an action under the Wyoming Uniform Parentage Act, Section 14-2-101 to 14-2-120, W.S. 1977 (the Act) alleging he is the biological father of X. He alleged Z is the presumptive father because X was born during the marriage of Y and Z and he further alleged sexual intercourse occurred between he and Y.

The petitioner, A, presented in his "Statement of the Case" in the Petition for Writ of Certiorari, two items which were not before the lower courts in any pleadings. He has referred:

1. to a prior marriage and divorce between A (the petitioner) and Y (the natural mother); and
2. that A and Y "co-habited" following the divorce (Petition for Writ of Certiorari, page 5).

These are both matters not alleged in any prior pleading. A copy of the amended complaint has been included as Appendix A to this brief.

Blood tests were taken by stipulation of the parties which indicated a 98.2% probability that A is the biological father. Prior to the hearing of any evidence, X, Y, and Z filed a motion to dismiss the action due to A's lack of standing.

The District Court granted the Motion to Dismiss holding the petitioner has no standing under the Act and that such denial is not a violation of the Equal Protection and Due Process Clauses of the Wyoming and United States

Constitutions. Petitioner appealed to the Supreme Court of the State of Wyoming. The Supreme Court affirmed the decision by the District Court, holding the petitioner lacked standing under the Act. The Court further held there was no violation of the Equal Protection Clause of the Wyoming Constitution and United States Constitution, as the classifications within the act clearly meet the test of bearing a substantial relationship to an important governmental interest. That governmental interest referred to by the Court is protecting the family as a unit and the legitimization of children born therein. The Court further held that Due Process was not denied the petitioner because the governmental function of protecting the family unit and legitimacy of the child far outweighs the private interest of the putative father. A vs. X, Y & Z, 641 P.2nd 1222 (Wy.1981).

REASONS FOR REFUSING THE WRIT

1. EQUAL PROTECTION. The Supreme Court of the State of Wyoming properly determined that petitioner is not denied equal protection of the law. The petitioner seeks a review of the decision because he claims the gender-based classification of the Act denies an equal protection under the law. The Court held the classification is not gender-based but if considered so, would meet the required tests stating:

> The classification is based on the distinction between those within the family unit and those without regardless of gender. It recognizes a difference between instances in which legitimacy and the interest of the child can be protected and those instances where such has already been violated. The nongender-based classification furthers important governmental objectives and has a substantial relationship thereto. If the

> classification can be said to be gender-based, it is not invidous but only realistically reflects the fact that sexes are not similarly situated in these circumstances. And, it is proper under any of the standards applied to it. Id. at 1226.

The Court in so holding is stating that the classifications within the Act are designed to relate to the circumstances and relationship of the parties involved and not gender alone. There are circumstances where the putative father may maintain an action, i.e. where no presumed father exists, Sec. 14-2-104(c), W.S. 1977. A presumed father may bring an action to determine the existence or non-existence of a parent-child relationship, Sec. 14-2-104(a)(i), W.S. 1977.

The interest of the State of Wyoming in the classifications set forth in the Act were clearly and forcefully stated as the Supreme

Court's decision quoted from the opinion of the District Court:

> ...The State has an interest in protecting and preserving the integrity of the family unit. (Citation omitted) It also has an interest in protecting the best interest of the child. Even in this era of no-fault divorce, frequent premarital sex and co-habitation and new attitudes toward child rearing, a child has a right to legitimacy and that right is one the State is bound to protect during minority. (Citation omitted)
>
> The statute is a legitimate attempt by the Legislature to protect the family unit and the children from external forces. A suit by one outside the marriage, such as in this case, could well destroy a marriage...Id. at 1225.

The test where a classification is in fact gender-based is that of requiring the classification to bear a subtantial relationship

to important governmental objectives. Craig v. Boren, 429 U.S. 190, 50 L.Ed.2d 397 (1976), Michael M. v. Superior Court of Sonoma County, 450 U.S. 464, 67 L.Ed.2d 437 (1981). The Supreme Court of the State of Wyoming in addressing the classifications within the Act and the question of allowing someone to attack the legitimacy of a child directed itself to the required standards stating:

> The legislative classification is reasonable and bears a fair and substantial relationship to important governmental objectives. It passes a constitutional challenge regardless of the standard by which measured. A v. X,Y,Z supra, at 1226.

The Court by its decision has upheld those important governmental objectives as enacted by the Legislature.

2. DUE PROCESS. As indicated in Smith v. Organization of Foster Familes, 431 U.S. 816, 53 L.Ed.2d 14, 31 (1977), the Court's first

inquiry relative to due process must be whether the party asserting the violation has an interest within the Fourteenth Amendment protection. No such right exist in this case. The series of cases considering the procedural due process problem involves the situations where an acknowledged right and/or existing relationship is sought to be terminated by some action of the State. Smith v. The Organization of Foster Familes, Id.; Quilloin v. Wolcott, 434 U.S. 246, 54 L.Ed.2d 511 (1978); Stanley v. Illinois, 405 U.S. 645, 31 L.Ed.2d 551 (1972).

For the Court to provide some form of hearing regarding the putative father would be to negate the protection established for the family by the Legislature. Once an action is brought and any form of hearing is held, the family unit has been attacked and harm done, regardless of the outcome of the initial hearing or any subsequent determination by the court.

A hearing is not required in all cases under the Due Process Clause. The procedures required are determined by the circumstances and begin with the determination of the nature of the government function and the private interest that is affected. Stanley v. Illinois, supra at 650. The government function involved in this case is nothing more than the Legislative determination that a putative father under these circumstances has no right to bring an action. The State under these circumstances is not actively involved in the termination of some existing and acknowledged relationships.

The Wyoming Supreme Court summarized its opinion quoting from the District Court's opinion letter:

> I don't believe that a statute which prevents a biological father from bastardizing a child violates due process of law. It appears that the Legislature has carefully weighed the various social values and decided that

> the biological father's rights are subordinate to the collective rights of the child, the mother, the presumed father and the family unit. A v. X, Y, Z, supra at 1227.

CONCLUSION

The Supreme Court of the State of Wyoming correctly held that the petitioner has not been denied Equal Protection and Due Process under the Fourteenth Amendment. The Petition for Certiorari should not be granted because the issues in this case involve questions of local governmental interest.

The Wyoming Legislature, in its adoption of the Wyoming Uniform Parentage Act, did not grant standing to an alleged biological father to seek a determination of paternity where a presumed father exists. The family itself has not waived its protection. This was not an oversight by the Legislature, but rather a responsible government action designed to

protect the legitimacy of children and the family as a unit.

As society seeks to govern itself through the implementation of laws, restrictions on the actions and rights of individuals will occur. A State Legislature in enacting any law, is balancing the interest of the State (i.e. society as a whole), and the individual. The Constitutional mandates of Equal Protection and Due Process are some of the guidelines to test these legislative actions. The Supreme Court of the State of Wyoming has applied these tests and held they have been met.

The State of Wyoming has an interest in protecting the family as a unit. It has an interest in protecting the legitimacy of children. The State has an interest in preserving the marriage. The importance of such relationships was recognized by this Court in Smith v. Organization of Foster Families, supra at 844, wherein it is stated:

> The basic foundation of the family in our society, the marriage relationship, is of course not a matter of blood relation. Yet its importance has been strongly emphasized in our cases: 'We deal with the right of privacy older than the Bill of Rights--older than our political parties, older than our school system. Marriage is coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political base; a bi-lateral loyalty, not commercial or social projects. It is an association for as noble a purpose as any involved in our prior decisions.' (Citations omitted)

It is this relationship the Petitioner seeks to intrude upon through the assertions his

complaint. It is therefore respectfully submitted that the Petition for Certiorari should be denied.

October, 1982.

Respectfully submitted,

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Attorneys for Respondents

APPENDIX "A"

STATE OF WYOMING	IN THE DISTRICT COURT	
COUNTY OF CAMPBELL	SIXTH JUDICIAL DISTRICT	
DOUGLAS EARL BRIGGS, Plaintiff, vs. LORI GENE EDWARDS, LINDSAY ELISE EDWARDS and JOSEPH LEON EDWARDS, Defendants.	)	Civil Action No. 10789

AMENDED COMPLAINT

COMES NOW the plaintiff, Douglas Earl Briggs by and through his attorney, John M. Daly, and states and alleges as follows:

1. That this action is brought pursuant to the Wyoming Uniform Parentage Act, Wyoming Section 14-2-101 through Section 14-2-120.

2. That the jurisdiction of the court is founded upon Wyoming Section 14-2-106b.

3. That the father is bringing the action pursuant to Wyoming Section 14-2-101 and affirmatively alleges that he is the biological father of the child born to the defendant, Lori Gene Edwars and the child's name is Lindsay Elise Edwards.

4. The plaintiff affirmatively alleges that Joseph Leon Edwards is the presumptive father of Lindsay Elise Edwards.

5. The plaintiff affirmatively alleges that sexual intercourse occurred between himself and the defendant in early November of 1979 in the State of Wyoming and that there is a statistical probability of the plaintiff's paternity based upon the duration of the mother's pregnancy and there is a statistical probability that the blood tests weighed in accordance with the evidence will show that the plaintiff is the biological father and there may be medical and anthropological evidence which will relate to the plaintiff's paternity based upon tests performed by experts.

6. The plaintiff affirmatively asserts that the child will have needs.

7. The plaintiff is with financial means to provide for the child and desires to do so.

8. The plaintiff desires and seeks visitation of the child.

WHEREFORE, the plaintiff prays that:

1. That the plaintiff be declared the father of the child.

2. That, as the father of the child, the birth records of the child be changed and that the presumptive father's name be stricken from those birth records.

3. That the plaintiff be given the rights of visitation and an obligation of support.

4. That the plaintiff stands ready, willing and able to pay the costs of the pregnancy, the

fee of the guardian ad litem, and the costs of the action herein.

DATED this 11th day of March, 1981.

s/John M. Daly
Attorney at Plaintiff
Of The Firm of
DALY, MAYCOCK, ANDERSON & TAYLOR
P. O. Box 38
Gillette, Wyoming 82716

CERTIFICATE OF SERVICE

I, John M. Daly, do hereby certify that I served the above and foregoing Amended Complaint upon the defendants by placing a true and correct copy thereof in the United States Mail, postage prepaid, addressed to the defendant's attorneys:

Mr. Dan Price
306 S. Gillette Ave.
Gillette, Wyo. 82716

Mr. Francis E. Stevens
1900 Energy Building
Gillette, Wyo. 82716

on this 11th day of March, 1981.

s/John M. Daly